

Hearing Date:
April 17, 2024
10:30 a.m.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

Case Number 23-10815-1

In Re: CELL-NIQUE CORPORATION

Chapter 11

Debtor.

**DEBTOR'S OPPOSITION TO THE MOTION TO DISMISS BY THE UNITED
STATES TRUSTEE FOR FAILURE TO REMIT TRUST FUND TAXES**

TO: HONORABLE ROBERT E. LITTLEFIELD, JR.
U.S. BANKRUPTCY JUDGE

Debtor in Possession, Cell-Nique Corporation ("Debtor"), by and through its counsel, O'Connell & Aronowitz, P.C., Peter A. Pastore, Esq., of counsel, as and for its opposition ("Opposition") to the Motion to Dismiss by the United States Trustee for Region 2, respectfully alleges:

1. By expedited motion, the United States Trustee has moved to dismiss this case ("Motion to Dismiss") (ECF Dkt. No. 108) for failure to remit withholding taxes to the IRS and other taxing authorities (Paragraph 7 of Motion to Dismiss). This Motion to Dismiss was occasioned by a hearing held before your Honor on April 3, 2024 when it was learned that Debtor's first quarter 2024 post-petition federal employment taxes were not paid.

2. After April 3, 2024, the Debtor immediately made arrangements to pay all accrued but unpaid federal employment taxes for said quarter.

3. Attached hereto as part of Exhibit A is an email to the undersigned from the President of the Debtor, Dan Ratner, wherein he demonstrates that the sum of \$127,966.52 has been paid to the IRS. Attached to said email are the 941 Tax Returns indicating full payment for said first quarter 2024.

4. Accordingly, Debtor has cured the federal employment tax liability that was a basis for the Motion to Dismiss by the United States.

5. Regarding the Debtor's Operating Report for February 2024, the Motion to Dismiss is correct that the Debtor did check the box "Yes" for questions in Part "7d", "7e" and "7f", indicating the Debtor had paid its federal tax liabilities for the first quarter of 2024. The Debtor's President, Dan Ratner, has explained the reason for this error. It was not in any way meant to mislead the IRS, this Court, the U.S. Trustee or any creditors. The reason for the error is that when Debtor filed its first Monthly Operating Report it was current on all its 941 returns and when the Debtor filed subsequent monthly operating reports it concentrated its attention to reporting financial numbers on its "Balance Sheet" attached to the monthly operating reports. In those financial reports the Debtor did reflect accrued but unpaid federal tax liabilities, which accurately represented the Debtor's true financial picture. Debtor should have corrected and changed paragraph 7d, 7e and 7f to reflect that those taxes were unpaid and, in fact, the attached balance sheet to the monthly operating report clearly indicated that they were unpaid. That mistake will not occur again.

6. The United States Trustee's Motion to Dismiss also raises the issue of unpaid employment taxes owed to New York State, Department of Revenue. Debtor has initiated contact with the New York State Department of Tax and Finance and is in the process of

applying for a payment plan to cure all unpaid taxes. Debtor will provide the United States Trustee with weekly updates regarding the Debtor's repayment application to New York State Tax and Finance.

7. Debtor disagrees with the allegations that the Debtor converted and concealed its use of trust fund taxes (P. 4, Motion to Dismiss); that is not the case at all. Debtor's cash flow was insufficient to pay said taxes, however, it has sufficient cash flow now to cure all arrears and propose a reasonable reorganization plan.

8. Berkshire Bank has filed a "Response" to the United States Trustee's Motion to Dismiss (ECF Dkt. No. 117). Initially it should be noted that the Debtor is current with its adequate protection payments to Berkshire Bank. All proposed Stipulation and Interim Orders for Use of Cash Collateral have been executed by Debtor and Debtor's counsel. Secondly, Berkshire Bank is not the movant and its Response filed April 15, 2024 just two (2) days before the hearing date of the Motion to Dismiss can not enlarge or amplify the Motion to Dismiss and permit the Court to consider other grounds for dismissal or conversion, not raised by the United States Trustee in its Motion to Dismiss.

9. In any event, the grounds for dismissal raised by Berkshire Bank are not persuasive. Debtor has prepared modifications to its proposed term sheet which serve as a legitimate basis for a Plan of Reorganization. Those terms have a reasonable likelihood of being accepted by all creditor classes.

9. Finally, Debtor disagrees with the United States Trustee's position that there has been gross mismanagement (P. 4 of Motion to Dismiss). Debtor continues to operate and employs over thirty (50) people. The examiner appointed by this Court is reviewing all financials and will soon be making a recommendation regarding the Debtor's business operation. Total

revenues on a consolidated basis since the filing date is almost three million (\$3,000,000.00) dollars. A dismissal or conversion is not in the best interests of the Debtor, its employees or its creditors. EBITDA (Earnings Before Interest Income Taxes Depreciation and Amortization) continues to grow robustly.

WHEREFORE, for these reasons set forth above, the Debtor respectfully requests that the Motion to Dismiss be denied in all respects.

Dated: April 16, 2024

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Peter A. Pastore", written over a horizontal line.

Peter A. Pastore, Esq.
O'CONNELL AND ARONOWITZ
54 State Street, 9th Floor
Albany, NY 12207-2501
Tel: (518) 462-5601
Fax #: (518) 462-2670
E-mail: papastore@oalaw.com

EXHIBIT A

Peter A. Pastore, Esq.

From: Dan Ratner <dan@hudsonriverfoods.com>
Sent: Monday, April 15, 2024 6:28 PM
To: Peter A. Pastore, Esq.
Subject: CN IRS Pmts made

[EXTERNAL EMAIL] WARNING: This message is from an external organization. STOP, LOOK, and THINK before you CLICK links or OPEN attachments. Please be sure you KNOW and TRUST the source of this email.

Hi Peter

CN	\$23,262.75	Confirm #270450213507755	4/11/24
		Confirm #	
HRF	\$32,227.09	24462669	4/11/24
		Confirm #	
DD	\$70,682.60	270450671209545	4/15/24

Total 1st Qtr 2024 941 paid \$127,966.52

--

Dan Ratner
Hudson River Foods
22 Hamilton Way
Castleton on Hudson, NY 12033
O:203.856.8550
Dan@Hudsonriverfoods.com
www.Hudsonriverfoods.com

Form 941 for 2024: Employer's QUARTERLY Federal Tax Return

(Rev. March 2024)

Department of the Treasury -- Internal Revenue Service

OMB No. 1545-0029

Employer identification number (EIN)	2	7	-	0	6	9	3	6	8	7
Name (not your trade name)	CELL-NIQUE CORP									
Trade name (if any)										
Address	22 HAMILTON WAY									
Number	Street				Suite or room number					
CASTLETON ON HUDSON				NY		12033-1015				
City				State		ZIP code				
Foreign country name				Foreign province/county			Foreign postal code			

Report for this Quarter of 2024
(Check one.)

- ☒ 1: January, February, March
☐ 2: April, May, June
☐ 3: July, August, September
☐ 4: October, November, December

Go to www.irs.gov/Form941 for instructions and the latest information.

Read the separate instructions before you complete Form 941. Type or print within the boxes.

Part 1: Answer these questions for this quarter. Employers in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and Puerto Rico can skip lines 2 and 3, unless you have employees who are subject to U.S. income tax withholding.

1	Number of employees who received wages, tips, or other compensation for the pay period including: Mar. 12 (Quarter 1), June 12 (Quarter 2), Sept. 12 (Quarter 3), or Dec. 12 (Quarter 4)	1	7
2	Wages, tips, and other compensation	2	115,291.16
3	Federal income tax withheld from wages, tips, and other compensation	3	5,623.20
4	If no wages, tips, and other compensation are subject to social security or Medicare tax	<input type="checkbox"/> Check here and go to line 6.	
<div>Column 1</div> <div>Column 2</div>			
5a	Taxable social security wages	$115,291.16 \times 0.124 =$	14,296.10
5b	Taxable social security tips	$\times 0.124 =$	
5c	Taxable Medicare wages & tips	$115,291.16 \times 0.029 =$	3,343.44
5d	Taxable wages & tips subject to Additional Medicare Tax withholding	$\times 0.009 =$	
5e	Total social security and Medicare taxes. Add Column 2 from lines 5a, 5b, 5c, and 5d	5e	17,639.54
5f	Section 3121(q) Notice and Demand—Tax due on unreported tips (see instructions)	5f	
6	Total taxes before adjustments. Add lines 3, 5e, and 5f	6	23,262.74
7	Current quarter's adjustment for fractions of cents	7	.01
8	Current quarter's adjustment for sick pay	8	
9	Current quarter's adjustments for tips and group-term life insurance	9	
10	Total taxes after adjustments. Combine lines 6 through 9	10	23,262.75
11	Qualified small business payroll tax credit for increasing research activities. Attach Form 8974	11	
12	Total taxes after adjustments and nonrefundable credits. Subtract line 11 from line 10	12	23,262.75
13	Total deposits for this quarter, including overpayment applied from a prior quarter and overpayments applied from Form 941-X, 941-X (PR), or 944-X filed in the current quarter	13	23,262.75
14	Balance due. If line 12 is more than line 13, enter the difference and see instructions	14	
15	Overpayment. If line 13 is more than line 12, enter the difference	Check one: <input type="checkbox"/> Apply to next return. <input type="checkbox"/> Send a refund.	

▶ You MUST complete both pages of Form 941 and SIGN it.

950224

Name (not your trade name)

CELL-NIQUE CORP

Employer identification number (EIN)

27-0693687

Part 2: Tell us about your deposit schedule and tax liability for this quarter.

If you're unsure about whether you're a monthly schedule depositor or a semiweekly schedule depositor, see section 11 of Pub. 15.

- 16 Check one: ☐ Line 12 on this return is less than \$2,500 or line 12 on the return for the prior quarter was less than \$2,500, and you didn't incur a \$100,000 next-day deposit obligation during the current quarter. If line 12 for the prior quarter was less than \$2,500 but line 12 on this return is \$100,000 or more, you must provide a record of your federal tax liability. If you're a monthly schedule depositor, complete the deposit schedule below; if you're a semiweekly schedule depositor, attach Schedule B (Form 941). Go to Part 3.

☒ You were a monthly schedule depositor for the entire quarter. Enter your tax liability for each month and total liability for the quarter, then go to Part 3.

Tax liability: Month 1

Month 2

Month 3

Total liability for quarter

Total must equal line 12.



You were a semiweekly schedule depositor for any part of this quarter. Complete Schedule B (Form 941), Report of Tax Liability for Semiweekly Schedule Depositors, and attach it to Form 941. Go to Part 3.

Part 3: Tell us about your business. If a question does NOT apply to your business, leave it blank.

- 17 If your business has closed or you stopped paying wages ☐ Check here and enter the final date you paid wages ; also attach a statement to your return. See instructions.

- 18 If you're a seasonal employer and you don't have to file a return for every quarter of the year . . . ☐ Check here.

Part 4: May we speak with your third-party designee?

Do you want to allow an employee, a paid tax preparer, or another person to discuss this return with the IRS? See the instructions for details.

☐ Yes. Designee's name and phone number

Select a 5-digit personal identification number (PIN) to use when talking to the IRS.

☐ No.

Part 5: Sign here. You MUST complete both pages of Form 941 and SIGN it.

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

X

Sign your name here

Print your name here

Print your title here

Date

Best daytime phone

Paid Preparer Use Only

Check if you're self-employed ☐

Preparer's name

PTIN

Preparer's signature

Date

Firm's name (or yours if self-employed)

EIN

Address

Phone

City State

ZIP code

Form **941 for 2024: Employer's QUARTERLY Federal Tax Return**

(Rev. March 2024)

Department of the Treasury -- Internal Revenue Service

OMB No. 1545-0029

Employer identification number (EIN)	8	1	-	2	5	6	5	6	8	3
Name (not your trade name)	HUDSON RIVER FOOD CORPORATION									
Trade name (if any)										
Address	22 HAMILTON WAY									
Number	Street				Suite or room number					
CASTLETON ON HUDSON				NY		12033-1015				
City				State		ZIP code				
Foreign country name				Foreign province/county			Foreign postal code			

Report for this Quarter of 2024
(Check one.)

- ☒ 1: January, February, March
☐ 2: April, May, June
☐ 3: July, August, September
☐ 4: October, November, December

Go to www.irs.gov/Form941 for instructions and the latest information.

Read the separate instructions before you complete Form 941. Type or print within the boxes.

Part 1: Answer these questions for this quarter. Employers in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and Puerto Rico can skip lines 2 and 3, unless you have employees who are subject to U.S. income tax withholding.

1	Number of employees who received wages, tips, or other compensation for the pay period including: Mar. 12 (Quarter 1), June 12 (Quarter 2), Sept. 12 (Quarter 3), or Dec. 12 (Quarter 4)	1	19																				
2	Wages, tips, and other compensation	2	157,621.47																				
3	Federal income tax withheld from wages, tips, and other compensation	3	8,012.55																				
4	If no wages, tips, and other compensation are subject to social security or Medicare tax	<input type="checkbox"/>	Check here and go to line 6.																				
<table><thead><tr><th></th><th>Column 1</th><th></th><th>Column 2</th></tr></thead><tbody><tr><td>5a</td><td>Taxable social security wages</td><td>$158,264.62 \times 0.124 =$</td><td>19,624.81</td></tr><tr><td>5b</td><td>Taxable social security tips</td><td>$\times 0.124 =$</td><td></td></tr><tr><td>5c</td><td>Taxable Medicare wages & tips</td><td>$158,264.62 \times 0.029 =$</td><td>4,589.67</td></tr><tr><td>5d</td><td>Taxable wages & tips subject to Additional Medicare Tax withholding</td><td>$\times 0.009 =$</td><td></td></tr></tbody></table>					Column 1		Column 2	5a	Taxable social security wages	$158,264.62 \times 0.124 =$	19,624.81	5b	Taxable social security tips	$\times 0.124 =$		5c	Taxable Medicare wages & tips	$158,264.62 \times 0.029 =$	4,589.67	5d	Taxable wages & tips subject to Additional Medicare Tax withholding	$\times 0.009 =$	
	Column 1		Column 2																				
5a	Taxable social security wages	$158,264.62 \times 0.124 =$	19,624.81																				
5b	Taxable social security tips	$\times 0.124 =$																					
5c	Taxable Medicare wages & tips	$158,264.62 \times 0.029 =$	4,589.67																				
5d	Taxable wages & tips subject to Additional Medicare Tax withholding	$\times 0.009 =$																					
5e	Total social security and Medicare taxes. Add Column 2 from lines 5a, 5b, 5c, and 5d	5e	24,214.48																				
5f	Section 3121(q) Notice and Demand —Tax due on unreported tips (see instructions)	5f																					
6	Total taxes before adjustments. Add lines 3, 5e, and 5f	6	32,227.03																				
7	Current quarter's adjustment for fractions of cents	7	.06																				
8	Current quarter's adjustment for sick pay	8																					
9	Current quarter's adjustments for tips and group-term life insurance	9																					
10	Total taxes after adjustments. Combine lines 6 through 9	10	32,227.09																				
11	Qualified small business payroll tax credit for increasing research activities. Attach Form 8974	11																					
12	Total taxes after adjustments and nonrefundable credits. Subtract line 11 from line 10	12	32,227.09																				
13	Total deposits for this quarter, including overpayment applied from a prior quarter and overpayments applied from Form 941-X, 941-X (PR), or 944-X filed in the current quarter	13	32,227.09																				
14	Balance due. If line 12 is more than line 13, enter the difference and see instructions	14																					
15	Overpayment. If line 13 is more than line 12, enter the difference	15																					

Check one: ☐ Apply to next return. ☐ Send a refund.

▶ You MUST complete both pages of Form 941 and SIGN it.

For Privacy Act and Paperwork Reduction Act Notice, see the back of the Payment Voucher.

Cat. No. 17001Z Form **941** (Rev. 3-2024)

Form **941 for 2024: Employer's QUARTERLY Federal Tax Return**

(Rev. March 2024)

Department of the Treasury - Internal Revenue Service

OMB No. 1545-0029

Employer identification number (EIN)	8	3	-	2	6	8	7	5	8	4
Name (not your trade name)	DANCING DEER CORPORATION									
Trade name (if any)										
Address	22 HAMILTON WAY									
Number	Street				Suite or room number					
CASTLETON ON HUDSON				NY		12033-1015				
City				State		ZIP code				
Foreign country name				Foreign province/county			Foreign postal code			

Report for this Quarter of 2024
(Check one.)

- ☒ 1: January, February, March
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☐ 4: October, November, December

Go to www.irs.gov/Form941 for instructions and the latest information.

Read the separate instructions before you complete Form 941. Type or print within the boxes.

Part 1: Answer these questions for this quarter. Employers in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and Puerto Rico can skip lines 2 and 3, unless you have employees who are subject to U.S. income tax withholding.

1	Number of employees who received wages, tips, or other compensation for the pay period including: Mar. 12 (Quarter 1), June 12 (Quarter 2), Sept. 12 (Quarter 3), or Dec. 12 (Quarter 4) . . .	1	37
2	Wages, tips, and other compensation	2	349,447.08
3	Federal income tax withheld from wages, tips, and other compensation	3	17,217.09
4	If no wages, tips, and other compensation are subject to social security or Medicare tax	<input type="checkbox"/> Check here and go to line 6.	
<div>Column 1</div> <div>Column 2</div>			
5a	Taxable social security wages	349,447.08 × 0.124 =	43,331.44
5b	Taxable social security tips	× 0.124 =	
5c	Taxable Medicare wages & tips	349,447.08 × 0.029 =	10,133.97
5d	Taxable wages & tips subject to Additional Medicare Tax withholding	× 0.009 =	
5e	Total social security and Medicare taxes. Add Column 2 from lines 5a, 5b, 5c, and 5d	5e	53,465.41
5f	Section 3121(q) Notice and Demand —Tax due on unreported tips (see instructions)	5f	
6	Total taxes before adjustments. Add lines 3, 5e, and 5f	6	70,682.50
7	Current quarter's adjustment for fractions of cents	7	.10
8	Current quarter's adjustment for sick pay	8	
9	Current quarter's adjustments for tips and group-term life insurance	9	
10	Total taxes after adjustments. Combine lines 6 through 9	10	70,682.60
11	Qualified small business payroll tax credit for increasing research activities. Attach Form 8974	11	
12	Total taxes after adjustments and nonrefundable credits. Subtract line 11 from line 10	12	70,682.60
13	Total deposits for this quarter, including overpayment applied from a prior quarter and overpayments applied from Form 941-X, 941-X (PR), or 944-X filed in the current quarter	13	70,682.60
14	Balance due. If line 12 is more than line 13, enter the difference and see instructions	14	
15	Overpayment. If line 13 is more than line 12, enter the difference	Check one: <input type="checkbox"/> Apply to next return <input type="checkbox"/> Send a refund.	

► You **MUST** complete both pages of Form 941 and SIGN it.

950224

Name (not your trade name)

DANCING DEER CORPORATION

Employer identification number (EIN)

83-2687584

Part 2: Tell us about your deposit schedule and tax liability for this quarter.

If you're unsure about whether you're a monthly schedule depositor or a semiweekly schedule depositor, see section 11 of Pub. 15.

16 Check one: ☐ Line 12 on this return is less than \$2,500 or line 12 on the return for the prior quarter was less than \$2,500, and you didn't incur a \$100,000 next-day deposit obligation during the current quarter. If line 12 for the prior quarter was less than \$2,500 but line 12 on this return is \$100,000 or more, you must provide a record of your federal tax liability. If you're a monthly schedule depositor, complete the deposit schedule below; if you're a semiweekly schedule depositor, attach Schedule B (Form 941). Go to Part 3.

☒ You were a monthly schedule depositor for the entire quarter. Enter your tax liability for each month and total liability for the quarter, then go to Part 3.

Tax liability: Month 1 19,463.75

Month 2 19,814.46

Month 3 31,404.39

Total liability for quarter 70,682.60

Total must equal line 12.

☐ You were a semiweekly schedule depositor for any part of this quarter. Complete Schedule B (Form 941), Report of Tax Liability for Semiweekly Schedule Depositors, and attach it to Form 941. Go to Part 3.

Part 3: Tell us about your business. If a question does NOT apply to your business, leave it blank.

17 If your business has closed or you stopped paying wages ☐ Check here and enter the final date you paid wages ; also attach a statement to your return. See instructions.

18 If you're a seasonal employer and you don't have to file a return for every quarter of the year . . . ☐ Check here.

Part 4: May we speak with your third-party designee?

Do you want to allow an employee, a paid tax preparer, or another person to discuss this return with the IRS? See the instructions for details.

☐ Yes. Designee's name and phone number

Select a 5-digit personal identification number (PIN) to use when talking to the IRS.

☐ No.

Part 5: Sign here. You MUST complete both pages of Form 941 and SIGN it.

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

X

Sign your name here

D.R.A.

Print your name here

Don Baker

Print your title here

President

Date 4/12/24

Best daytime phone 203 256 8550

Paid Preparer Use Only

Check if you're self-employed ☐

Preparer's name

PTIN

Preparer's signature

Date

Firm's name (or yours if self-employed)

EIN

Address

Phone

City

State

ZIP code

Deposit Confirmation

Your payment has been accepted.

Payment Successful

An EFT Acknowledgement Number has been provided for this payment. Please keep this number for your records.

REMINDER: REMEMBER TO FILE ALL RETURNS WHEN DUE!

EFT ACKNOWLEDGEMENT NUMBER:	270450671209545
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Payment Information	Entered Data
Taxpayer EIN	xxxxx7584
Tax Form	941 Employers Federal Tax
Tax Type	Federal Tax Deposit
Tax Period	Q1/2024
Payment Amount	\$70,682.60
Settlement Date	04/15/2024
Account Number	xxxxx3572
Account Type	CHECKING
Routing Number	211871691
Bank Name	BERKSHIRE BANK